to contribution from the other co-tenants for their proportionate share of the purchase price," but holds it inapplicable. See, however, the following decisions as more or less opposed to this view: *Van Horne* v. *Fonda,* 5 Johns. Ch. (N. Y.) 388; *Bracken et al.* v. *Cooper et al.,* 80 Ill. 221; *Keller* v. *Auble,* 58 Pa. (8 P. F. Smith) 410, 98 Am. Dec 297; *Montague* v. *Selb et al.,* 106 Ill. 49; *Lee & Graham* v. *Fox et al.,* 6 Dana 176; *Leach et al.* v. *Hall et al.,* 95 Ia. 611, 64 N. W. 790; *Beaman* v. *Beaman,* 90 Miss. 762, 44 So. 987; *Mauzey* v. *Dazey,* 114 Ill. App. 652. As denying that part of the English rule which says that tenants in common do not occupy a fiduciary relation towards each other, see *Clements* v. *Cates,* 49 Ark. 242, 4 S. W. 776.

WILLS—CONSTRUCTION—MISTAKE OF DRAFTSMAN.—Property was bequeathed in trust, income to be paid to N., a son of testatrix, during his life, and at his death to his wife during her life, "and upon the death of the survivor of them, by said son N. * * * and his wife, to pay, transfer and deliver" the property or proceeds thereof in equal shares, "to their three children, and the survivor of them, free and discharged of all trusts." N. and his wife had no children when the will was executed, a fact well known to the testatrix (nor have they any children now). But at the time the will was drawn and executed, testatrix had three grandchildren of whom she was known to be fond, two daughters of a daughter and a son of a son other than her son N. Two of these three grandchildren (the grandson is now dead) petition to have the will corrected, alleging that they are the final legatees intended, and that there was a mistake made by the draftsman of the will. *Held,* the words descriptive of the final legatees were an abbreviated paraphrase of the words "my three grandchildren, the children of my son N. and his wife," and the latter phrase being inapt since N. and his wife had no children, should be disregarded, leaving "my three grandchildren" as designating the final legatees. *Polsey et al.* v. *Newton et al.* (1908), — Mass. —, 85 N. E. 574.

There is no ambiguity, uncertainty or error apparent upon the face of this will, nor is there jurisdiction in equity to reform or correct an instrument once admitted to probate as a will. Upon these grounds the defendants demurred and while the court unanimously sustained the demurrer on both grounds, a majority of the justices went further and undertook a discussion of the true construction of the will here involved. Such a step being unnecessary after having held the bill insufficient in law, the discussion with the consequent conclusion reached by a majority of the court, being indecisive, is mere dictum, or to adopt the language of the two dissenting Justices (LORING and BRALEY) it "forms no part of the adjudication in the case." *Cohens* v. *Virginia,* 6 Wheat. (U. S.) 264, 399; *Ex parte Christy,* 3 How. (U. S.) 292; *Peck* v. *Jenness et al.,* 7 How. (U. S.) 612; *Carroll* v. *Carroll,* 16 How. (U. S.) 275, 287. Even a dictum should not go unchallenged. There seems to be good authority for holding with LORING and BRALEY, JJ., that the conclusions of the majority of the court were ill-advised. The English courts in a number of well considered cases have laid down

the rule that a will must be construed as it comes from the hands of the testator; it cannot be altered by adding words to, or taking words away from unambiguous words found therein. Only when there is ambiguity apparent on the face of the will or general terms capable of a number of meanings, can parol evidence be adduced and words added or taken away; when the words used are clear and certain other words cannot be added to give to them another and a different meaning. To permit this would defeat the purpose of the requirements of our statutes that a will be in writing. *Newburgh* v. *Newburgh,* 5 Mad. Ch. 364; 21 R. R. 310; GRAY, CAS. PROP., Vol. 4, p. 165; *Guardhouse* v. *Blackburn,* L. R. 1 P. and D. 109; GRAY, CAS. PROP., Vol. 4, p. 174; *Harter* v. *Harter,* L. R. 3 P. and D. 11; GRAY, CAS. PROP., Vol. 4, p. 180. Many American cases may be found cited in the Digests upon this point, but most of them are, as is pointed out in ROOD, WILLS, § 159, "Cases holding parol evidence incompetent to aid erroneous descriptions of legatees * * * but are entirely inapplicable" to a case such as the principal case. The words of a will must prevail and cannot be controlled by mere conjectural constructions, even though the consequences may appear absurd, or inconvenience may result. *Gibson* v. *Seymour,* 102 Ind. 485, 2 N. E. 305, 52 Am. Rep. 688. A will cannot be construed otherwise than as clearly expressed. *Elliott* v. *Topp,* 63 Miss. 138. An express disposition, though probably involving an oversight or mistake by testator, cannot be controlled by inference. *Bacot* v. *Wetmore,* 17 N. J. Eq. 250. A majority of the Massachusetts court has permitted, it seems, a commendable desire to give effect to what might well have been the intent of the testatrix, to overcome what their better judgment and a more careful consideration of the subject would undoubtedly have indicated the law to be.